



Federal Communications Commission
Washington, D.C. 20554

March 7, 1995

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MAR 14 '95
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE
SECRETARY

The Honorable Marge Roukema
U. S. House of Representatives
Washington DC 20515-3009

92-297

Dear Congresswoman Roukema:

Chairman Reed E. Hunt has asked me to respond to your letter of February 14, 1994 concerning a possible conflict of interest that the Chairman might have in participating in the Local Multipoint Distribution System (LMDS) proceeding based on his previous relationship with Hughes Space and Communications while he was a partner at Latham & Watkins.

Please be assured that the Commission and the Chairman are sensitive to conflict of interest issues and intend to maintain the highest standards of ethical conduct. Moreover, the Chairman's participation in the LMDS proceeding has been closely reviewed by the Commission's career ethics staff in its Office of General Counsel and has been found to be fully consistent with the requirements of the Standards of Ethical Conduct for Executive Branch Employees promulgated by the Office of Government Ethics (OGE).

The OGE regulations require a Government official to consider recusing him or herself from an adjudicatory-type matter in which a person representing a party in the adjudication is someone for whom that official has, within the previous year, served as an employee, general partner or attorney. In the case of the Chairman, this one-year cooling-off period expired on November 30, 1994. See 5 C.F.R. §2635.502. The OGE regulations do not generally contemplate that an official consider recusal from general rulemakings, such as the LMDS proceedings, merely because a former employer or client is a commenter.

As you point out, on December 15, 1994, the Chairman, as a matter of his own discretion, did recuse himself from a rulemaking proceeding that involved Hughes. His recusal was not, however, grounded on the fact that Hughes or Latham & Watkins was a participant in the rulemaking. Rather, he did so because, while at Latham & Watkins, the Chairman had personally participated on behalf of Hughes in a United States District Court proceeding that involved an issue closely related to an issue that was being addressed as a part of the Commission's rulemaking. Even though recusal was not required by the OGE rules, the Chairman, in an abundance of caution, decided in that instance that it would be appropriate for him to recuse himself.

Similar circumstances do not exist in the LMDS rulemaking. The Chairman has not previously personally represented clients concerning any issues that will be considered in the rulemaking. In the circumstances, a recusal from a general rulemaking is clearly not contemplated by the OGE regulations.

Although we are extremely sensitive to the need to consider recusal in all appropriate cases, it has not been the policy of this office to urge recusal, even when requested by others, when it is clearly not warranted. To do so would encourage challenges by parties simply interested in removing certain perspectives from Commission deliberations. Moreover, we believe that the interests of both the FCC and the American people are best served by participation of all of the Commissioners, so long as consistent with government ethics requirements.

For the above reasons, after careful consideration, it is our opinion that there is no reason for the Chairman to consider recusing himself from participating in the LMDS rulemaking proceeding.

Your concern about maintaining the public's confidence in the integrity of the Commission's proceedings is shared by both the Chairman personally and the Commission. Please feel free to contact me if I can provide any additional information regarding this matter.

Sincerely,



William E. Kennard
Designated Agency
Ethics Official

cc: Chairman Reed E. Hunt
LMDS Record



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The Honorable Robert G. Torricelli
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Washington DC 20515-3009

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